

**Report of the
District of Columbia
Child Support Guideline
Commission**

Final Recommendations

December 2013

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CHILD SUPPORT GUIDELINE COMMISSION

Parents have a legal obligation to provide support for their children. When the parents and children are not living together in a single household and child support obligations must be established, the child support is determined by state child support guidelines. Federal law mandates that each state establish and implement guidelines to govern how child support awards are calculated in that jurisdiction. Prior to the Child Support Enforcement Amendments of 1984¹, which established the requirement for state-enacted guidelines, child support amounts were left primarily to judicial discretion, resulting in widely varying support awards. Issues such as the treatment of public benefits, the appropriate percentage of family income that should be used for maintaining children's needs, and what earnings should be considered income for purposes of calculating support, varied not only from state-to-state but also from order-to-order within a state.

While the guidelines for each state are unique and born of that state's law and demographics, Federal law provides the following principles for states to follow in the development and maintenance of their child support guidelines:

- ❖ Guidelines must be made available to the judges who set child support amounts.²
- ❖ Application of the guidelines must be presumptive and rebuttable only where their application would be unjust or inappropriate.³
- ❖ Deviation from the guidelines must be supported by written findings stating the guideline award amount and the reasons for varying from this amount.⁴

¹ Public Law No. 98-378. The application of state guidelines remained discretionary until the enactment of the Family Support Act of 1988, Public Law No. 100-485.

² 42 U.S.C. § 667(b)(1); 45 C.F.R. § 302.56(b)

³ 42 U.S.C. § 667(b)(2); 45 C.F.R. § 302.56(f)

⁴ 45 C.F.R. § 302.56(g)

- ❖ Guidelines must take into account all earnings and income of the parent with a duty to pay support.⁵
- ❖ Guidelines must be based on specific criteria, and their application must result in a numeric child support value.⁶
- ❖ Guidelines must address how the child’s medical needs will be covered.⁷

Once the child support guideline is established states are required to review their guidelines at least once every four years “to ensure that their application results in the determination of appropriate child support award amounts.”⁸ The Child Support Guideline Commission (hereinafter “The Commission”) was established⁹ to carry out these tasks in the District of Columbia.

MAKEUP OF THE COMMISSION

The Commission consists of a chairperson and members who are appointed by the executive, judicial, and legislative branches of the District of Columbia government. The Chief Judge of the D.C. Superior Court appoints judicial officers to be members of the Commission. The Mayor of the District of Columbia appoints the chairperson and additional Commission members. The mayoral appointees must include both a representative of the Child Support Services Division of the Office of the Attorney General for the District of Columbia (CSSD) and a member of the D.C. Bar who is an expert in child support. Finally, the D.C. Council appoints Commission members, including a Councilmember and an expert in the fields of family law and child support. Apart from the professional qualifications cited above, each member of the Commission must also be a resident of the District of Columbia.

⁵ 45 C.F.R. § 302.56(c)(1)

⁶ 45 C.F.R. § 302.56(c)(2)

⁷ 45 C.F.R. § 302.56(c)(3)

⁸ 45 C.F.R. § 302.56(e)

⁹ D.C. Law 8-90, § 3, 37 DCR 758; July 25, 1990

The current members of the Child Support Guideline Commission are:

The Honorable Judith Bartnoff
Associate Judge
Superior Court for the District
of Columbia

Stacy Brustin
Associate Professor
Columbus School of Law
The Catholic University of
America¹⁰

Cory Chandler
Commission Chairperson
Deputy Attorney General
Family Services Division
Office of the Attorney General
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The Honorable Noel Johnson
Magistrate Judge
Superior Court for the District
of Columbia

Justin Latus
Policy Analyst
Child Support Services Division
Office of the Attorney General
for the District of Columbia¹²

Damali Rhett¹³
Managing Consultant
IBM

Tommy Wells
Councilmember
Council of the District of
Columbia¹⁴

The Commission would also like to recognize the contributions of the following persons, who provided support to the Commission in its review of the Guideline:

¹⁰ Resolution 18-259, 56 D.C. Reg. 8404 (Oct. 23, 2009).

¹¹ Resolution 18-194, 56 D.C. Reg. 5719 (July 17, 2009) and Resolution 19-947, 59 D.C. Reg. 11467 (October 5, 2012).

¹² Resolution 19-948, 59 D.C. Reg. 11467 (October 5, 2012).

¹³ Resolution 19-949, 59 D.C. Reg. 11467 (October 5, 2012).

¹⁴ Resolution 20-81, 60 D.C. Reg. 5774 (April 19, 2013).

James Carter

Adrienne Day, Assistant Attorney General, Office of the Attorney General for the District of Columbia

Starr Granby-Collins, Attorney Advisor, Child Support Services Division, Office of the Attorney General for the District of Columbia

Chairman Phil Mendelson, Chairman of the Council of the District of Columbia

Brian Moore, Committee Clerk, Committee on the Judiciary, Council of the District of Columbia

April Randall, Assistant Attorney General, Office of the General Counsel, Department of Human Services for the District of Columbia

Jane Venohr, Research Associate/Economist, Center for Policy Research

Michele Zavos, Zavos Juncker Law Group, PLLC

FUNCTIONS OF THE COMMISSION

The Commission is charged with reviewing the Child Support Guideline and recommending to the Mayor amendments to the Guideline. Federal law requires each state to “consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines...to ensure that deviations from the guidelines are limited.”¹⁵ District of Columbia law further requires that the Commission hold at least one public meeting annually to gather input from the citizens about the application of the Guideline and whether it results in appropriate child support awards.¹⁶

In addition to reviewing overall economic data and the application of the guidelines in general, the Commission is specifically tasked with evaluating the on-going validity of the following dollar amounts found in the Guideline:

¹⁵ 45 C.F.R. § 302.56(h)

¹⁶ D.C. Code § 16-916.02

- ❖ Presumptive minimum award of \$50 per month,
- ❖ Adjusted combined gross income above which the Guideline does not apply presumptively; that amount is \$240,000 under the current Guideline,
- ❖ Extraordinary medical expenses in excess of \$250 per year per child, and
- ❖ Low income adjustment threshold at the Guideline amount of \$600.¹⁷

PROCESS OF THE COMMISSION

The work of the Commission was accomplished through a series of meetings at which anecdotal information about the operation of the current Guideline was gathered; specific portions of the Guideline were analyzed; required research was planned and presented; information sources were identified and the results of information-gathering reported; and finally, decisions were made on the recommendations to be presented to the Mayor. Following is a list of the Commission meetings:

- ❖ February 17, 2010 – Kickoff Meeting
- ❖ March 25, 2010 – Meeting at CSSD¹⁸
- ❖ April 22, 2010 – Meeting at CSSD¹⁹
- ❖ May 20, 2010 – Meeting at CSSD²⁰
- ❖ June 24, 2010 – Meeting at CSSD²¹
- ❖ July 7, 2010 – Meeting at CSSD²²

¹⁷ D.C. Code § 16-916.01(y)

¹⁸ CSSD's office is located at 441 4th Street, NW, Suite 550 North, Washington, D.C. 20001. Public notice of this meeting was published in advance. D.C. Register, 57 D.C. Reg. 2353 (Mar. 19, 2010)

¹⁹ D.C. Register, 57 D.C. Reg. 3119 (Apr. 9, 2010)

²⁰ D.C. Register, 57 D.C. Reg. 3793 (April 30, 2010)

²¹ D.C. Register, 57 D.C. Reg. 4465 (May 21, 2010)

- ❖ October 21, 2010 – Meeting at CSSD
- ❖ November 18, 2010 – Meeting at CSSD
- ❖ December 7, 2010 – Meeting at CSSD
- ❖ January 20, 2011 – Meeting at CSSD
- ❖ March 10, 2011 – Meeting a CSSD
- ❖ April 12, 2011 – Meeting at CSSD
- ❖ June 18, 2012 – Meeting at CSSD
- ❖ September 20, 2012 – Meeting at CSSD
- ❖ January 24, 2013 – Meeting at CSSD²³
- ❖ March 28, 2013 – Meeting at CSSD²⁴
- ❖ May 9, 2013 – Meeting at CSSD²⁵
- ❖ June 25, 2013 – Meeting at CSSD²⁶
- ❖ August 22, 2013 – Meeting at CSSD²⁷
- ❖ October 2, 2013 – Meeting at CSSD²⁸
- ❖ November 7, 2013 – Meeting at CSSD²⁹
- ❖ November 27, 2013 – Meeting at CSSD³⁰

The Commission meetings were open to the public. In addition, the Commission held meetings specifically designed to solicit input from the community at large. The Commission invited members of the public to come to

²² D.C. Register, 57 D.C. Reg. 4697 (May 28, 2010)

²³ D.C. Register, 60 D.C. Reg. 447 (January 18, 2013)

²⁴ D.C. Register, 60 D.C. Reg. 3823 (March 15, 2013)

²⁵ D.C. Register, 60 D.C. Reg. 6286 (April 26, 2013)

²⁶ D.C. Register, 60 D.C. Reg. 9150 (June 14, 2013)

²⁷ D.C. Register, 60 D.C. Reg. 11318 (August 2, 2013)

²⁸ D.C. Register, 60 D.C. Reg. 13477 (September 27, 2013)

²⁹ D.C. Register, 60 D.C. Reg. 15066 (October 25, 2013)

³⁰ D.C. Register, 60 D.C. Reg. 16196 (November 22, 2013)

the Old Council Chambers on July 8, 2010 in the 441 4th Street, N.W., Judiciary Square Building and provide commentary on the current Guideline³¹. A second meeting was held at the Anacostia Public Library on July 31, 2010³². The Commission publicized the meetings in advance in the D.C. Register.

Definitions

CSSD – Child Support Services Division: A unit of the Office of the Attorney General for the District of Columbia.

FPL – Federal Poverty Level: The income threshold as defined by the federal government. This threshold is updated every year by the Census Bureau.

TANF – Temporary Assistance for Needy Families: A grant program to provide assistance to families in need by providing additional temporary monetary support.

Obligor – The parent obligated to pay child support through a court order.

Obligee – The parent to whom support is owed.

Payor – The parent obligated to pay child support to the other parent.

Payee – The parent to whom support is owed by the payor.

³¹ D.C. Register, 57 D.C. Reg. 4920 (June 4, 2010)

³² The Commission notes that no members of the public or representatives of the listed organizations attended either public meeting.

RECOMMENDATIONS

In 2004, the Commission issued recommendations that resulted in sweeping changes to the Guideline. Prior to that report, the Guideline had not been significantly altered since its original enactment in 1990. As the 2004 report observes, our understanding of financial data, demographics of the American family, and the overall mission of the child support program had drastically changed in the intervening period. The original Guideline calculated child support based principally on a percentage of the non-custodial parent's income. That approach resulted in disparities in the treatment of income and certain expenses between the parents and also was inconsistent with the presumption of joint custody in District of Columbia law. The 2004 recommendations essentially replaced the then-existing Guideline with an Income Shares model that treats both parents equally and currently is the most widely accepted approach to the calculation of child support.

Under the Income Shares model, each of the parents is recognized to have a duty to provide support for the child. The total support obligation is set out in a table that is included in the Guideline. The support obligation is determined based on economic data about the percentage of household income that is spent on the "children's" expenses in two-parent families. The model determines the amount spent on children by first determining what is spent on "adult" costs and calculating the reduction in those expenditures once a child is introduced into the family. Each parent's share of the support obligation for the child is based on that parent's percentage share of the total parental income, after certain adjustments are made.

The current Commission determined that the Income Shares model continues to be the most appropriate way to calculate child support and that no change to the basic approach in the current Guideline is warranted at this time. The Commission therefore focused its review on refining the existing Guideline and correcting and improving it to address any discrepancies that were observed or other issues that were brought to the Commission's attention. The Commission is making eleven recommendations for improvements to the Guideline. A discussion of those recommendations can be found in this report.

Summary of Recommendations

The list below summarizes the recommendations. Each of the recommendations is discussed separately below in greater detail. This is followed by a brief discussion of other issues that the Commission considered but decided did not warrant a change in the Guideline.

Recommendations

Economic Review of the Guidelines

1. Retain Income Shares model.
2. Increase presumptive minimum award from \$50 per month to \$75 per month.
3. Increase high income boundary, to the extent warranted after evaluation of most current economic data available regarding the costs of raising children.
4. Retain extraordinary medical expenses threshold of \$250.
5. Retain low-income protection requiring that order not exceed 35% of the adjusted gross income.

Treatment of Military Benefits

6. Amend the definition of gross income to include such military benefits as Basic Allowance for Housing (BAH) and Base Allowance for Subsistence (BAS).

Self-Support Reserve

7. Amend sections (g) and (m) of the Guideline to require the factfinder to consider whether the self-support reserve and low income adjustment will have a negative impact on the basic needs of the children and impose additional burdens on the payee.

Zero Orders

8. Retain current Guideline language permitting the entry of \$0 orders.

Calculating Support When Income Data is Unavailable

9. Amend the Guideline so that when income data is unavailable—because the payor refuses to provide data or fails to appear—the minimum order is entered.

Order Commencement Date

10. Clarify Guideline so that it is consistent with Income Withholding Transfer and Revision Emergency Amendment Act of 2006 which requires that all child support orders that are enforceable by the IV-D agency (i.e., CSSD) be made payable in monthly increments due on the first of each month.

Economic Analysis

11. Engage economist to provide economic analysis of several elements of or issues related to the Guideline, including the following:
 - a. Guideline tables, including updating using most recent economic data.
 - b. High-income boundary
 - c. Low-income protection of 35% of adjusted gross income
 - d. Self-support reserve, including suitability of setting a self-support reserve for *both* parents.

Note: several sections recommend engaging an economist; they are all included in this recommendation.

I. ECONOMIC REVIEW OF THE GUIDELINES

The prior Commission had the benefit of an expert economist, paid for by CSSD, who assisted the Commission in its review of the available data and in developing its recommendations. For the current review, CSSD did not have funds available to engage an economist to provide further assistance to the Commission. In the intervening time, new data analyses have been done on the most current costs of raising children. The Commission has concluded that the assistance of an expert economist is required in order to update the Guideline tables to take account of the most up-to-date data available, and it therefore recommends that funds be made available to CSSD to engage such an expert. The Commission further believes that it will require an expert economist in order to be in full compliance with D.C. Code § 16-916.01(y).³³

Although the Commission was not able to recommend a change to the Guideline tables without the assistance of an expert economist, it was able to review the Guideline, as required by the statute. The following discussion addresses each of the issues that is required to be reviewed.

Income Shares Model

The adoption of the Income Shares model in the current Guideline was a substantial departure from the earlier Guideline, which determined child support based principally on a percentage of the income of the “non-custodial” parent, with various adjustments. After an exhaustive review of the three most common models used by states to calculate child support, the Commission concluded that the earlier model resulted in inconsistencies and unfairness, and that the Income Shares Model was the most appropriate for the District of Columbia. Review of the Guideline in operation has confirmed that position.

The underlying premise of the Income Shares Model is that both parents have the obligation to provide support for their children and that the child should receive essentially the same proportion of the joint parental income that s/he would have received if his/her parents had lived together.³⁴ That premise is consistent with the laws of the District of Columbia regarding child custody,

³³ D.C. Code § 16-916.01(y) reads, “The Mayor shall recommend to the Council every 4 years whether the dollar values in subsections (g)(3), (h), (j)(1), (m)(2), and (m)(3) of this section should adjusted for inflation.”

³⁴ National Conference of State Legislatures. <http://www.ncsl.org/issues-research/human-services/guideline-models-by-state.aspx>. Update July 2012.

which include a rebuttable presumption of joint custody, although joint custody can encompass many different types of arrangements and take a variety of forms.³⁵

Under the Income Shares Model, the gross incomes of both parents are determined and added together. The child support obligation at the combined income level is set out in a table that is included in the statute, and the particular parent's share is determined by his/her share of the parents' combined income.³⁶ Specific issues regarding what is included in income and appropriate adjustments to income are discussed in other parts of this report.

The Income Shares Model is currently used by 38 states to calculate child support, including four of the six states in Region 3 (the Mid-Atlantic states, including D.C., Virginia, Maryland, Delaware, Pennsylvania, and West Virginia).³⁷ The transition to the new Guideline in the District of Columbia has proceeded smoothly, and the new Guideline has been well accepted by practitioners and the public. On review of the operation of the Guideline, the Commission continues to believe that child support in the District of Columbia should be calculated under the Income Shares Model and recommends that the basis for the Guideline not be changed.

As is noted above, the Commission is aware that there are economic analyses that have been published since the current Guideline was enacted, based on more recent economic data regarding the costs of raising children. The Commission has been advised that based on the new analyses, the Guideline tables reliably can be extended to parents with a combined adjusted gross income of \$360,000 per year, which exceeds the \$240,000 level in the current Guideline. The current Guideline includes additional technical adjustments to the child support obligations at the higher income levels, and the Commission is not in a position to update the current child support obligation table without the assistance of an expert economist. The Commission therefore recommends that funds be made available for the District of Columbia to engage an expert

³⁵ See D.C. Code 16 § 914(a)(2).

³⁶ The Office of Child Support and Enforcement: Essentials for Attorneys in Child Support Enforcement <http://www.acf.hhs.gov/programs/cse/pubs/2002/reports/essentials/c9.html>. In the District of Columbia, the table is included Appendix I to D.C. Code §16-916.01.

³⁷ National Conference of State Legislatures. <http://www.ncsl.org/issues-research/human-services/guideline-models-by-state.aspx>. Update July 2012.

economic consultant to review the most recent data and advise the Commission with regard to updating the child support table.

Minimum Award

The current statute provides that when the judicial officer finds that a parent with adjusted gross income below the self-support reserve has the ability to pay child support, there is a presumption that the parent can pay a minimum amount of \$50 per month, while also meeting his/her subsistence needs.³⁸ The Commission is aware that the \$50 minimum award is consistent with the majority of jurisdictions around the country, but it nevertheless is recommending that the presumptive minimum award be increased to \$75 per month.

The minimum award amount has not been changed in over twenty years, although there has been inflation in the intervening time. Using the Bureau of Labor Statistics CPI Inflation Calculator, \$50 in 1990 had the same buying power as \$87.83 in 2012. Although the minimum award does not come close to meeting the child's needs, whether at \$50 or \$75, the Commission concluded that some adjustment in the minimum award should be made, to account at least partly for inflation and in recognition that the costs of raising children have continued to increase. The Commission is not recommending a regular inflation adjustment to the minimum award, but it does believe that an increase to \$75 is consistent with the purpose of the presumptive minimum, while also accounting for inflation.

High Income Boundary

The Commission considered whether the upper bounds of the Guideline tables should be increased. Currently, the Guideline applies presumptively up to combined parental gross income of \$240,000.³⁹ The pre-2006 Guideline was based primarily on the income of the non-custodial parent, and was applicable only to an annual income of \$75,000. An advantage of the Income Shares model proposed by the 2004 Commission was that the child support calculation was valid for combined parental incomes up to \$240,000 per year. In making that recommendation, the 2004 Commission considered the price

³⁸ D.C. Code § 16-916.01(g)(3)

³⁹ §16-916.01 (h)

levels, poverty level and the income tax rates at the time its report was written.⁴⁰

As is discussed above, the Commission is aware that more current economic data now is available and is recommending that funds be appropriated so that an economist can be engaged to assist in updating the Guideline tables. The Commission further understands that if more current data is used, the upper limit of the Guideline could be extended to combined parental incomes of \$360,000. The Commission does not recommend any extension of the high income boundary until the Guideline is updated, but it does recommend that once an expert economist is engaged and the Guideline is updated, the high income boundary be increased to the maximum extent.

Extraordinary Medical Expenses

Medical expenses of \$250 per year per child are included in the basic child support amounts set out in the Guideline tables. The Guideline provides for an additional payment beyond the basic Guideline amount for “extraordinary medical expenses,” which are defined as “uninsured or unreimbursed medical expenses in excess of \$250 per year, per child.” These expenses include co-payments, deductibles, contributions associated with public and private health insurance, and costs that are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, or the diagnosis or treatment of a health condition.⁴¹

Under the Guideline, extraordinary medical expenses are divided between the parents in proportion to their respective adjusted gross incomes. To the extent that extraordinary medical expenses are recurring and can reasonably be predicted, those expenses can be included in each parent’s share of the basic child support when the child support order is entered. The District’s treatment of extraordinary medical expenses as an add-on to the basic child support

⁴⁰ 2004 District of Columbia Child Support Commission Report. Page 16-17.

⁴¹ DC Code §16-916.01(j)(1). Amounts paid by either parent for health insurance premiums for a child subject to a support order are divided equally between the parents in proportion to their respective adjusted gross incomes and added to the parents’ respective shares of the basic child support obligation. Each parent’s payment of health insurance premiums therefore is taken into account in the child support calculation. See Section 916.01(i)(1)-(5).

amount is consistent with the treatment of medical expenses by other states in the region.⁴²

The Commission considered whether the current \$250 threshold for extraordinary medical expenses should be adjusted for inflation pursuant to DC. Code §16-916.01(y). The ability of the Commission to fully explore this question was limited without an economic expert to conduct an analysis.⁴³ Nevertheless, the Commission did conduct independent research and has concluded that the District's \$250 threshold should remain unchanged. The current \$250 amount is the amount used in Maryland's recent revision of its child support guideline and is consistent with other jurisdictions in the region including Virginia, West Virginia and Pennsylvania.⁴⁴

During the time when the Commission was conducting its review, the Patient Protection and Affordable Care Act was enacted.⁴⁵ The Act became law on March 23, 2010 and certain parts of it have taken effect, although full implementation is not scheduled to be completed until 2015. It may be that implementation of the Act will affect the scope of medical expenses for minor dependents covered by insurance, which could reduce the add-ons to basic child support for out-of-pocket medical expenses.⁴⁶ But it does not appear that the Guideline's approach to addressing medical expenses is affected by the Affordable Care Act or that any changes to the Guideline will be warranted because of the Act. The Commission further understands that the more current economic analyses of the costs of raising children continue to include medical expenses of \$250 per child in the determination of basic child support. The threshold for extraordinary medical expenses therefore should remain at that level. Only if the newer economic models include a different amount for medical expenses in the determination of the basic child support obligation

⁴² Annotated Code of Maryland §12-201(h)(1)(2); West Virginia Code §48-13-602(d);

⁴³ The economic data on which the current Guideline is based include \$250 per child in annual medical expenses. The Commission concluded that any adjustment in that amount should be based on consideration of the entirety of more current economic data and a corresponding updated Guideline. It would be premature to adjust the medical expenses element of the basic Guideline without a broader analysis.

⁴⁴ Virginia Code Ann. § 20-108.2; West Virginia Code § 48-1-255; Pennsylvania R.C.P. No 1910.16-6.

⁴⁵ P.L. 111-148, signed March 23, 2010.

⁴⁶ For instance, Section 1302 of the Affordable Care Act defines "essential medical benefits" to include all forms of preventive and rehabilitative care, emergency services, and "pediatric vision and dental care" and requires that they be covered by all qualifying health benefit plans. The Patient Protections and Affordable Care Act § 1302, 42 USC 18022.

would there be any reason to modify the current Guideline threshold for extraordinary medical expenses, based on the analysis of an economist.

Low Income Adjustment

The D.C. Child Support Guideline incorporates a low income adjustment in section (m), which is to be applied as the last step in the Guideline calculation. The factfinder is to determine the parent's maximum ability to pay support by subtracting the self-support reserve from the parent's adjusted gross income. If the remaining amount is negative or less than \$600 per year, then section (g) regarding subsistence and the presumptive minimum order applies. If the maximum ability to pay support is greater than or equal to \$600 per year, then the child support obligation is the lesser of i) the maximum ability to pay or ii) the calculated child support obligation. The last step in the low income adjustment process is to determine whether the child support obligation (including additions for health insurance premiums, extraordinary medical expenses, and child care expenses) exceeds 35% of the adjusted gross income of the obligor. If so, pursuant to section (n), the support obligation must be reduced.

The 35% limit is consistent with research that suggests that Guideline amounts constituting more than 35% of an obligor's income lead to lower compliance.⁴⁷ Nationally, for very low income obligors (i.e., those with incomes of \$8,640 per year), their child support obligation represents 23% of their income on average. For D.C. this number is even lower at 7%.⁴⁸ Nationally, for low income obligors (i.e., those with incomes of \$18,000 per year), their child support obligation represents 28% of their income on average. For D.C. the average child support obligation for low income obligors is slightly higher at 31% of income.⁴⁹

Therefore, there is no evidence to suggest that the 35% limit should be changed. However, this is one of the factors that should be reviewed by an economist to ensure that the child support calculation under the Guideline fairly balances the needs of the child(ren) with the subsistence needs of the obligor and likelihood of compliance.

⁴⁷ Bartfeld & Meyer, 1994, 2003; Meyer 1998; Meyer & Bartfeld 1996 cited by Pirog.

⁴⁸ Pirog Figure 1: Child Support Payment as Percentage of Non-Custodial Parent's Gross Income US Averages and Figure 2: Monthly Child Support Awards – Case A 2009.

⁴⁹ Pirog Figure 1 and Figure 3: Monthly Child Support Awards – Case B, 2009.

II. TREATMENT OF MILITARY BENEFITS

In 2010, the District of Columbia Court of Appeals issued a decision in the case of *Brown v. Hines-Williams*⁵⁰, which addressed a novel child support question regarding what constitutes income of a parent in active military service. The appellant (who was in active military service and had a duty to pay support) contested, among other things, the trial judge’s decision to include certain military benefits in the calculation of his income. In particular, the decision addresses the Basic Allowance for Housing (BAH) and the Base Allowance for Subsistence (BAS). Basic Allowance for Housing (BAH) is a monetary supplement to the service member’s base wages that is intended to offset housing costs if the service member does not live in government-provided housing.⁵¹ Base Allowance for Subsistence (BAS) is a monetary allowance added to the service member’s base wages that is intended to offset the cost of food for the service member only.⁵²

The appellant argued that: (1) BAS and BAH are not part of his gross income; and (2) even if they are part of gross income, they should be excluded pursuant to the provision in the Guideline that states “gross income should not include income received. . . on behalf of a child in the household of a parent or third-party custodian, . . . if the income is for a child who is not subject to the support order.”⁵³ The Court rejected the first argument, stating that housing and food allowances are exactly the kind of income that is meant by “perquisites.” A perquisite is a “privilege, gain, or profit incidental to regular salary or wages.”⁵⁴ The Guideline further defines perquisites as non-wage compensation that reduces the employee’s living expenses (for example, a company-provided car or meal allowances).⁵⁵ The Court of Appeals found that BAS and BAH, which are benefits that specifically are intended to subsidize living costs in addition to basic wages, met the definition of a perquisite and therefore should be included in income for purposes of determining the service member’s child support obligation.

⁵⁰ 2 A.3d 1077(2010)

⁵¹ <http://militarypay.defense.gov/pay/bah/index.html>

⁵² <http://militarypay.defense.gov/pay/bas/index.html>

⁵³ D.C. Code § 16-916.01(d)(7)

⁵⁴ <http://www.merriam-webster.com/dictionary/perquisite>

⁵⁵ D.C. Code §16-916.01((d)(1)(R)

The appellant's second argument also was rejected. The Court relied on the Department of Defense's definition that BAS is for the sole benefit of the service member and explicitly excludes the food needs of other family members. The Court further determined that although a portion of the BAH allowance "depends on the presence of a dependent, BAH cannot be said to be a payment to that dependent." BAH is received by the service member who may "do as he pleases" with that income.⁵⁶ The BAS and BAH therefore are income of the parent and not income of the child.

The Commission recommends that the definition of gross income be amended to include such military benefits as BAH and BAS.

III. SELF-SUPPORT RESERVE

Under the current Guideline, a self-support reserve (SSR) of 133% of poverty is deducted from the payor's gross income to allow the payor to meet basic subsistence needs. The Commission is not in a position to recommend a change in the SSR percentage without additional economic analysis.

The SSR and low income adjustment provisions of the D.C. Guideline (DC Code §§16-916.01(g) (m) & (n)) do not explicitly consider the payee's personal subsistence living costs when calculating the payee's contribution to child support. For example, a payor working 35 hours per week at the D.C. minimum wage of \$8.25 per hour earns \$15,015 per year. After applying the SSR deduction, the payor is required to pay \$50 per month.⁵⁷ If the payee also works 35 hours per week at minimum wage then the payee does not receive any subsistence allowance under the Guideline. The payee nonetheless may not be eligible for Temporary Assistance for Needy Families (TANF) depending on the number of children in the household. Although the payee may be entitled to other benefits such as food stamps and Medicaid, the payor may also be eligible for these benefits. As a result, there would be a significant disparity in the percentage of income that each parent pays for the support of the children, even though their incomes are essentially the same. The payor would be paying 4% of monthly income toward support. In order to meet the

⁵⁶ 2 A. 3d 1077, 1083 (2010)

⁵⁷ In the "Minimum Award" section of this report, the Commission recommends increasing the minimum award so that the amount the payor would be required to pay would increase from \$50 to \$75 per month.

children's basic expenses, it is likely that the payee would need to contribute a substantially higher percentage of income toward support, which the payee could not afford and also support himself or herself.

In order to remedy this inequity and to minimize the perception of differential treatment of parents, the Commission recommends that section (g) and (m) of the Guideline be modified to require that the factfinder consider the impact of application of the SSR and low income adjustment on the financial wellbeing of the children and the subsistence needs of the payee.⁵⁸ If the payee also has insufficient resources to be self-supporting then the court must determine the extent to which the self-support reserve should be applied to reduce the payor's support obligation. In making that determination, the court should consider the following:

- the living circumstances of the payor and payee,
- provision of in-kind resources or services by either the payor or payee to the children,
- public benefits, subsidies and tax credits available to both the payor and payee, and
- the impact that the SSR or low income adjustment will have on pass-through in TANF cases.

The court should then determine whether the presumptive guideline amount is appropriate in light of those circumstances.

Sections (g)(2) & (3) already allow for consideration of other factors in determining whether to order support below or above the presumptive minimum amount. Those sections do not require the factfinder to consider the

⁵⁸ Washington requires that neither parent's child support obligation exceed 45% of his or her net income. However, before applying the 45% rule, courts must consider "...[w]hether it would be unjust to apply the limitation after considering the best interest of the child and circumstances of each parent. Such circumstances include... leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and any involuntary limits on either parent's earning capacity..." Wash. Rev. Code Ann. § 26.19.065(1)(LexisNexis 2012.) In Arizona, the court may reduce the support amount based on the self-support reserve, but only after considering the financial impact that the reduction in support would have on the resident parent's household. Ariz. Rev. Stat. Ann. § 25 app. (15)(2012).

impact of application of the SSR and low income adjustment on the financial wellbeing of the children and the subsistence needs of the low income payee.

The Commission considered whether there should be a dual self-support reserve, which is an approach that has been adopted by a few states. It is important to consider whether an SSR should apply to both parents' incomes to ensure that each of the parents has sufficient funds for his or her basic subsistence before the child support obligation is imposed. Some suggest that there is a self-support reserve inherent in the Guideline in a TANF case because the payee's TANF grant is not considered income. However, the typical TANF grant is extremely low. It is currently at 28% of the federal poverty line. Currently, cases involving TANF recipients constitute approximately 29% of the IV-D caseload in the District of Columbia.⁵⁹

The Commission would need more economic analysis in order to determine whether to recommend a dual SSR.

IV. ZERO ORDERS

The Child Support Guideline focuses on how to calculate the amount of support owed. The entry of a child support order is a two-pronged analysis. Prior to setting the amount of support, a finding must be made that the parent has a duty to support. Once a duty to support is established, the Guideline mandates that a child support order be entered.

When a parent is found to have a duty to support the child(ren) but (s)he has no source of income, the Guideline presumes that the other parent can pay at least a minimum amount of \$50 per month.⁶⁰ The current Guideline provides that the Court has discretion to deviate below the presumed \$50 minimum order, and permits a downward adjustment to \$0, in appropriate cases. The 2004 Commission Report contemplated that there could be circumstances when a \$0 order would be appropriate.⁶¹ [“the presumption can be rebutted down to \$0...with evidence of resources and/or circumstances affecting the parent's ability to pay including but not limited to age, employability, disability,

⁵⁹ Fiscal Year 2012 OCSE-157 Report, Child Support Services Division, Office of the Attorney General, District of Columbia.

⁶⁰ The Commission is recommending that the presumptive minimum be increased to \$75 per month.

⁶¹ D.C. Code §16-916.01 (g)(3); 61-901.01 (g)(2)

homelessness, incarceration, inpatient substance abuse treatment, other inpatient treatment, or other appropriate circumstances” (Child Support Guideline Commission 2004 Final Report, p. 12).]

When the current Guideline became effective in 2006, some judicial officers initially were reluctant to enter \$0 orders. In their view, the entry of an order to pay \$0 per month would provide no benefit to the child and constitute a legal fiction. Rather, those judicial officers expressed the view that it made better sense to wait until the parent found employment and could actually pay before entering a child support order. More recently, however, judicial officers regularly have been entering \$0 orders, in appropriate cases.

The Commission confirms that it is appropriate for child support orders to be entered, even at \$0 per month, in order to establish the parent’s duty of support.⁶² The Commission considered recommending a change to the Guideline to require the entry of a minimal order of \$10 per month where there is a duty to support, but the Commission decided against recommending such a change.

The Commission was concerned that a required minimum in the amount of \$10 per month could be confused with the guideline’s existing presumption in favor of \$50 minimum orders. Further, there are circumstances where a \$0 order is appropriate, and the Commission continues to believe that the Guideline gives judges the discretion to enter \$0 orders in the rare circumstances when they are warranted.

The Commission therefore recommends no modification to the current Guideline language permitting the entry of \$0 orders, in the Court’s discretion.

V. CALCULATING SUPPORT WHEN INCOME DATA IS UNAVAILABLE

Currently, the Guideline authorizes a judicial officer to impute income to a parent with a duty to pay support when the court finds that the parent is voluntarily unemployed or underemployed in an effort to minimize his or her share of the total child support obligation or to increase the other parent’s

⁶² There also are certain federal performance requirements for the establishment of orders, which are satisfied by the entry of \$0 orders.

share.⁶³ However, the guideline does not give guidance on whether a court can issue a child support order when a parent with a duty to pay support i) has been served but fails to appear and no reliable information is available concerning that parent's income or ii) appears but fails to provide income information and no other reliable information concerning income is available.⁶⁴

In a situation in which the parent with a duty to pay support is properly served and fails to appear, the court can issue a bench warrant. In FY 2010, 1,433 bench warrants were issued in child support matters.⁶⁵ However, in very few, if any, of those cases was a final child support order entered. Although some of the cases were unable to proceed because paternity had not been established, many of the cases could have resulted in the establishment of child support but for the failure of the parent with a duty to pay support to participate in the hearing. This is due to the fact that the child support calculation under the Guideline requires that the Court have income information for both parents. As a result, there may be some financial incentive for parents with a duty to pay support to avoid the court process. The Commission therefore recommends that in circumstances where information about the income of the parent with the duty to pay support is unavailable (either due to failure to appear or failure to provide information) the court shall enter a minimum order of support.

The Commission considered whether to impute income using minimum wage figures, labor statistics, or some other method to calculate income when other information is available. However, as is described in the 2004 Commission Report, the Guideline formula was predicated on, among other things, the principle that the formula "should reflect current economic realities, including the current costs of child rearing and the parents' ability to pay."⁶⁶ Research shows that imputing income far above actual income levels results in unenforceable orders and uncollectible arrearages, because parents are less

⁶³ D.C. Code § 16-916.01(d)(10)

⁶⁴ When the parent with a duty to pay support has been served and fails to appear but there is reliable evidence as to the parent's income from other sources such as an Employer's Statement, then the court can calculate a child support award based on that evidence. Similarly, if the parent with a duty to pay support appears but fails to provide income information, then the court may use other reliable evidence presented to determine the parent's income. The Commission's recommendation concerns situations in which there is NO available or reliable evidence as to the parent's income.

⁶⁵ E-mail from Michael W. Chamberlain, Paternity and Support Docketing/Bench Warrant Supervisor, D.C. Superior Court, to Adrienne Day, Section Chief Program Operations, Child Support Services Division, Office of the Attorney General for the District of Columbia (Feb. 24, 2011, 05:14:13 EST).

⁶⁶ Report page 6.

likely to pay when they believe the support order amount is unreasonable or when they realistically are unable to pay it. Parents with orders based on imputed income were about four times more likely to pay nothing than parents with orders based on information about the parent's actual income.⁶⁷

After balancing the needs of the child and of the parent to whom support is owed against the goal of entering appropriate, enforceable orders, the Commission decided that where there is no reliable information regarding the income of the parent with a duty to pay support, a minimum order⁶⁸ strikes the appropriate balance.

The Commission considered that if only a minimum order is entered when one party fails to provide information, the parent with a duty to pay support may be rewarded for his or her failure to appear and participate in the child support proceeding. Nonetheless, under the current statutory framework, the reality is that if there is no other reliable income information available, the parent's failure to appear would result in no order being entered at all. The Commission believes that a minimum order, which is immediately enforceable, is preferable.

VI. ORDER COMMENCEMENT DATE

The child support Guideline currently provides that “if an order or agreement providing for child support does not set forth a date on which the child support commences, the child support shall be deemed to commence on the date the order was entered or the date the agreement was executed.” See D.C. Code § 16-916.01(u).

After the Commission submitted its recommendations in 2004, the D.C. Council passed the Income Withholding Transfer and Revision Emergency Amendment Act of 2006.⁶⁹ That law states that all child support orders that are enforceable by the IV-D agency (CSSD), pursuant to the Social Security Act, “shall require the payment of support in equal monthly amounts on the first of each month.” The Act further states that “if a support order does not require the payment of

⁶⁷ OIG: State Policies Used to Establish Child Support Orders for Low Income Non-custodial Parents. July 2000 <http://oig.hhs.gov/oei/reports/oei-05-99-00391.pdf>.

⁶⁸ Section I. Economic Review of the Guideline, Minimum Orders of this report recommends that the minimum order amount be increased from \$50 to \$75.

⁶⁹ Law 16-100, 53 D.C. Reg. 4233 (May 26, 2006).

support in this manner and the support order is or becomes subject to enforcement by the IV-D agency, the IV-D agency may direct the payor, upon notice to both parents, to pay the support in equal monthly amounts on the first day of the month.” See D.C. Code § 16-916(c-4).

In its review of the current Guideline, the Commission noted the inconsistency between the Guideline (as reflected in D.C. Code § 16-916.01(u)) and the Income Withholding Transfer Act (as reflected in D.C. Code § 16-916(c-4)) with regard to when the child support payments must be made. The Commission recommends that the Guideline be amended to conform to the requirements of the Withholding Transfer Act.

The Commission therefore recommends that D.C. Code § 16-916.01(u) be amended to provide: “If an order or agreement providing for child support does not set forth a date on which the child support commences, the child support shall be deemed to commence on the first day of the first month following either the date the order was entered or the date the agreement was executed, unless the order was entered or the agreement was executed on the first of the month, in which case the order should be deemed to commence that day.”

REJECTED PROPOSALS

CASE RESOLUTION TIMEFRAMES

The Commission considered whether to recommend that timeframes be imposed for resolution of child support cases and concluded that it would not be appropriate for any such action to be taken at this time. The Commission is aware that when a case is filed in court to establish a child support order, there can be delays in obtaining service on the respondent parent and in obtaining reliable income information. Given the difficulties presented by those situations and the wide range of issues that can arise, the time required before a final order can be issued may vary substantially from case to case.

The Commission also has been advised that the Superior Court has internal performance standards, which set out time frames for resolution of different types of cases, for internal management purposes. No time frames otherwise have been imposed on the Court for resolution of particular types of cases, except for statutory deadlines imposed in specialized circumstances when constitutional liberty interests are at stake, such as in connection with involuntary commitments to a mental hospital or the removal and placement of abused and neglected children. No such circumstance is presented here, and the Commission concluded that it is both impractical and unnecessary to impose time frames for resolution of child support cases

TANF AS INCOME

The Commission revisited the question of whether Temporary Assistance for Needy Families should continue to be excluded from the definition of income for purposes of determining child support. The Commission researched every other state's laws and found that only two states include any portion of TANF as income,⁷⁰ three states impute minimum wage to the TANF recipient, and one additional state leaves the question to the discretion of the court by not addressing it. The District of Columbia's treatment of TANF benefits therefore continues to fall in line with the vast majority of other states, and the

⁷⁰ Idaho Code Ann. § 7-1202(7) (2010).

Commission concluded that there currently is no reason to revise the provision that excludes TANF benefits from income.

BLENDING FAMILIES RECEIVING TANF

An additional issue considered by the Commission was the Guideline's treatment of families in which there are multiple children living in the same household who do not all have the same parents, and TANF is received for some of the children and not others. The Commission confirmed that even when a child is the subject of a child support order, if that child's parent is eligible to receive TANF, the child will remain part of the TANF grant. The TANF law requires that all siblings in the household must be included in the grant. Although a parent may elect to opt out of TANF, a parent cannot obtain a TANF grant for less than all the children in the household.

The Commission concluded that no adjustment was warranted in the Guideline based on the way the TANF program operates. The extent to which the TANF program considers child support in determining eligibility for TANF and the amount of the TANF grant do not affect the policies underlying the calculation of child support.

MULTI-FAMILY ORDERS

The Commission also considered whether the Guideline adequately and fairly addresses situations in which parents support children other than those whose support is the subject of a particular case—which could include additional children living in the parent's household or additional children living in other households. Under current law, a support order that is being paid by either parent shall be deducted from the parent's gross income before the child support obligation is computed." §16-916.01(d)(4). In addition, "[e]ach parent shall receive a deduction from gross income for each child living in the parent's home for whom the parent owes a legal duty to pay support, if the child is not subject to the support order. §16-916.01(d)(5). The Commission determined that these statutory provisions adequately address multi-family support obligations by giving credit for other children who are living in the parent's home or other children who are the subject of a support order, but

not for children who do not live with the parent and who are not the subject of a support order. There does not appear to be any reason for a modification at this time.

CASH MEDICAL SUPPORT, COMPREHENSIVENESS OF HEALTH INSURANCE COVERAGE, AND ALTERNATIVE COVERAGE

In 2007, the District of Columbia City Council enacted a law that changed medical support requirements in child support cases.⁷¹ The law states that the court may order either or both parents to provide health insurance coverage to the child, cash medical support, or both. “Cash medical support” is defined as “an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent, through employment or otherwise, or for extraordinary medical expenses, or for other medical costs not covered by insurance.”

In addition the Affordable Care Act made further changes that will affect health insurance coverage, including mandating that people carry health insurance, providing subsidies to low-income individuals to obtain health insurance, and expanding Medicaid. Certain aspects of the Act currently are in effect, and others are scheduled to be implemented in 2014 and 2015.

The Commission considered whether to recommend any changes to the medical support provisions of the Guideline, but it determined that it would be premature to do so at this time. The Commission will monitor implementation of the Affordable Care Act, as well as any changes to medical support requirements that may be enacted at the federal level in the aftermath of the Affordable Care Act, and will consider whether to recommend modifications to the Guideline after the impact of the new law can be ascertained. The Commission has identified the following issues for further review:

1. Whether the Guideline should include some more specific guidance regarding the amount of cash medical support that the court should order. The current Guideline includes no guidance, and a minimal amount of \$10 currently is being used.

⁷¹ DC Law 17-128, Child Support Compliance Amendment Act of 2007.

2. Whether the Guideline should include guidance to the court for evaluating the cost, comprehensiveness and accessibility of a health insurance plan.⁷²
3. Whether the Guideline specifically should provide for the court to order alternative forms of health coverage (such as ordering a parent to apply for Medicaid, SCHIP, D.C. Healthcare Alliance, or D.C. Healthy Families) or to address situations in which the child is covered by the parent’s spouse who otherwise has no duty of support and is not a party to the child support case.

The Commission in its further reviews also will consider any other issues regarding medical support as may be brought to its attention, particularly in light of the Affordable Care Act.

PRIMA FACIE CASE FOR MODIFICATION

A question also was raised with regard to the presumption in §16-916.01(r)(4) that a change in the parents’ incomes that would result in a change in the Guideline calculation of 15 percent or more constitutes a “substantial and material change in circumstances” warranting modification of a child support order, and whether that presumption would limit modifications in the context of \$0 orders. The Guideline explicitly does not limit modifications to circumstances where there would be a 15 percent change, §16-916.01(r)(4), and instead makes clear that the presumption does not preclude parties from seeking a modification based on a substantial and material change in circumstances, regardless of the amount of the resulting order. The Commission therefore concluded that this is not an issue and that no modification of the Guideline is needed.

⁷² Under current law, “[i]n selecting among health insurance coverage options, the court shall consider, at a minimum, the cost, comprehensiveness, and accessibility of all health insurance coverage options available to either parent.” §16-916(c-2). See also §16-916(c-3B); §16-916(c-3C).

COST OF LIVING ADJUSTMENT

The Commission discussed whether to incorporate a cost of living adjustment to the income and support levels to reflect changes brought about by inflation. The Commission concluded that the requirement for review and adjustment every three years provides a mechanism for determining whether cost of living and other economic changes warrant adjustments in support.